

November 15, 2002

Dockets Management System  
U.S. Department of Transportation  
Room PL 401  
400 Seventh Street, SW  
Washington, DC 20590-0001

Re: Comments to Docket Number FMCSA-02-11650 (HM-232A)

Dear RSPA:

Onyx Environmental Services (Onyx), a leader in the hazardous waste service industry, is pleased to present comments to the USDOT on the advanced notice of proposed rulemaking entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." Onyx is a provider of hazardous waste management services to generators nationwide. In providing these services Onyx functions as both a shipper and carrier of hazardous materials.

In general, Onyx is supportive of the Agency's efforts to improve the security of hazardous materials during transportation. Onyx's specific comments are presented in the attachment to this letter. Upon review of these comments, should the Agency have a need for additional information from Onyx, please contact Tom Baker at (973) 691-7330, or via email at [tbaker@onyxes.com](mailto:tbaker@onyxes.com). Onyx appreciates the opportunity to provide input on this important proposed regulation.

Sincerely,

Thomas M. Baker  
Director, Environmental and Transportation

## **Onyx Environmental Services**

### **Comments on FMCSA's Hazmat Security ANPR (67 FR 46622, July 16, 2002)**

#### ***General Comments and Recommendations***

Onyx Environmental Services ("Onyx") is supportive of the DOT's initiative to improve the safety and security of the nation's over 800,000 daily shipments of hazardous materials. This ANPR presents several possible methods to enhance the security of hazmat shipments while en route to a destination. This ANPR comes quickly on the heels of DOT's May 2, 2002, security proposal for which comments are still under review. Onyx recommends that the DOT delay any further action on this ANPR until the May rulemaking is finalized and the required security enhancements have been implemented by industry. During this time industry will have developed their en route security plans, as proposed in 172.802, and will also have had the opportunity to evaluate the effectiveness of those plans during transportation.

Furthermore, DOT should consider other methods in addition to the ANPR for gathering and reviewing industry practices and experience on the security topic. DOT should sponsor public meetings where the transportation industry and other concerned parties can exchange ideas and best management practices in a live forum. This forum may be more beneficial than an ANPR alone in determining what direction the DOT should take on future rulemakings to improve the security of hazmat shipments.

#### ***Current Transportation Security Programs at Onyx***

In the course of transporting hazardous wastes for disposal, Onyx encounters a wide range of types and quantities of hazardous materials. Presently, the security methods employed by Onyx are uniform for all shipments, and independent of the types and quantities of hazardous materials being transported. In promoting secure shipments Onyx has primarily focused attention on (1) using qualified and experienced drivers, (2) locking of the transportation vehicles while intransit, (3) utilizing company safe havens for intransit shipments where feasible, and (4) educating company drivers to act responsibly and sensibly to enhance security during transportation. Onyx's experience is that these methods have been effective in maintaining the general security of its shipments. However, it is clear that these measures will most likely be inadequate at deterring terrorist activity directed at the hazardous materials in Onyx's control during transportation. As a result, Onyx supports the overall efforts of DOT to improve the security of the high-risk hazardous material shipments.

The following section contains Onyx's comments on the specific security measures proposed by the DOT.

## ***USDOT's Proposed Security Requirements***

### **1. Pre-notification**

Pre-notification to authorities of the occurrence of select high-risk shipments of hazardous materials is a reasonable method to enhance security provided the shipment information is kept confidential by the responsible authorities. Such shipment information (routing, types of hazards, scheduling) in the hands of terrorists would certainly decrease the current level of security of these shipments. Onyx believes that it is necessary only to impose such pre-notification requirements on select hazardous material shipments that pose a significant threat to the nation's security. This may include highway route controlled quantities of a radioactive (Class 7) material, certain large quantities of an explosive 1.1, 1.2 or 1.3 material, bulk shipments of a material poisonous-by-inhalation, and certain quantities of highly toxic infectious substances (i.e CDC regulated select agents). By limiting the pre-notification requirements to these materials, the local and state authorities will be able to focus their limited resources on the most significant security and public safety risks. One possible detriment to the transportation industry of the pre-notification is that some authorities, upon learning of these shipments, may be inclined to over-regulate or improperly restrict the movement of these hazardous materials through their communities. It will be essential that the DOT take action as appropriate to assure that this is not the unintentional result of this security enhancement.

### **2. Escorts**

As a component of the pre-notification requirement discussed above, it should be the state/local authority's discretion to provide an armed escort for only the most security-sensitive shipments. The authorities will be able to use the Homeland Advisory System Threat Condition level and other classified information regarding terrorist threats in determining the necessity for a shipment to have an armed escort. The cost of providing an armed escort should not be born by the transportation industry since this issue is really a measure of national security. And, to reiterate, the use of armed escorts should be extremely limited as the financial burden could be significant on the authorities. In addition, Onyx is not supportive of the concept of requiring certain drivers or other company employed security personnel to carry firearms in the commercial motor vehicle due to concerns related to employee safety and company liability.

### **3. Vehicle Tracking**

Improving a motor carrier's ability to closely monitor the location of the vehicle and communicate with the driver are reasonable means to enhance security. To date, Onyx has not implemented a satellite tracking system for its fleet. Onyx shipments consist of a mixture of long haul and local pick-up and deliveries. The need for satellite tracking for the local transportation activities is limited since the drivers report back to their home terminal on a daily basis. Conversely, long haul transportation is better suited for satellite

tracking due to the minimal direct daily contact a company has with its driver. The major impediment to implementing such a system is cost. Should DOT mandate the use of satellite tracking systems, at a cost of approximately \$2,000 per unit plus monthly operating costs, these systems would become a significant financial burden for a large motor carrier to bear. Additionally, the vehicle tracking system itself would not likely be a deterrent to preventing a terrorist attack or hijacking aimed at a hazardous material shipment; it would only serve to improve the ability for law enforcement to respond to such an attack. Onyx believes that DOT should encourage the use of vehicle tracking systems where appropriate rather than mandate its use by regulation. Alternatively, DOT should only require the use of satellite tracking systems for those high-risk hazardous materials that are identified by Onyx in the “Pre-notification” comments section above.

Additional methods to improve communication with drivers include the use of two-way radios or cellular phones. These lower costs alternatives to satellite tracking systems should be considered by DOT as an acceptable means to improve the security of certain high-risk hazardous material shipments.

#### 4. Anti-theft Devices

Use of tamper-resistant and tamper-evident seals for cargo compartments are readily available at a relatively low cost to the transportation industry. Although these devices will not likely deter a terrorist attack or completely prevent the risk of cargo theft, they do enhance the general security of a shipment. Seals and locks that limit access to authorized personnel only will provide evidence if the cargo has been tampered with and will also effectively deter some minor attempts at vandalism and theft.

#### 5. Safe Havens

Expanding the use of safe havens for the transportation of hazardous materials should be further evaluated by DOT. Current regulations for attendance (397.5) and parking (397.7) of motor vehicles pertain only to explosive materials (Division 1.1, 1.2, and 1.3). Other high-risk hazardous materials should also not be parked unattended unless a minimal level of security is provided. Although it may not be financially feasible for most motor carriers to construct a safe haven as defined in the NFPA 498 publication, DOT should still require that these shipments only be parked in areas that provide an adequate level of security. This may consist, at a minimum, of parking the vehicle on well-lit private property that is protected by a fence equipped with a controlled-access gate.